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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VILOX TECHNOLOGIES, LLC, and)
JOSEPH L. DE BELLIS,)
)
Plaintiffs,)
) C.A. No. 23-302 (MN)
v.)
)
ORACLE CORPORATION,)
)
Defendant.)

Monday, September 9, 2024
2:00 p.m.
Oral Argument

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE MARYELLEN NOREIKA
United States District Court Judge

APPEARANCES:

RAMEY, LLP
BY: WILLIAM P. RAMEY, III, ESQ.

-and-

JOSEPH DeBELLIS, Pro Se

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13:50:12 12
13:50:12 13 COURTROOM DEPUTY: All rise. The United States
13:50:30 14 District Court for the District of Delaware is now in
13:50:33 15 session. The Honorable Maryellen Noreika presiding.

14:18:13 16 THE COURT: All right. Good afternoon,
14:18:17 17 everyone. Please be seated.

14:18:19 18 All right. We can start with some brief
14:18:24 19 introductions.

14:18:30 20 THE COURT: Mr. Blumenfeld.

14:18:32 21 MR. BLUMENFELD: I'm willing to go first, Your
14:18:34 22 Honor.

14:18:34 23 THE COURT: You're the plaintiff in a related
14:18:36 24 case.

14:18:36 25 MR. BLUMENFELD: Jack Blumenfeld from Morris

14:18:41 1 Nichols for Oracle. With me is Jared Bobrow from Orrick.

14:18:46 2 THE COURT: Good afternoon.

14:18:48 3 DR. DeBELLIS: I'm Joseph DeBellis and I
14:18:53 4 represent myself. Good afternoon.

14:18:56 5 MR. RAMEY: Good afternoon. I'm Bill Ramey from
14:18:59 6 Vilox. Thank you, Your Honor. We're ready to proceed.

14:19:02 7 THE COURT: Thanks.

14:19:03 8 So we have this motion to dismiss the Amended
14:19:08 9 Complaint. And there are four claims that are asserted in
14:19:16 10 the Amended Complaint. I have some questions about the
14:19:24 11 method claims that are asserted and who it is that is doing
14:19:30 12 what is alleged. But I want to be a little bit careful
14:19:38 13 because Mr. Bobrow, as I understand it, your position is if
14:19:41 14 I dismiss this complaint with prejudice as you requested,
14:19:45 15 you're going to essentially declare victory in your
14:19:48 16 declaratory judgment action and he can't bring these claims.
14:19:52 17 Right?

14:19:52 18 MR. BOBROW: Yes, Your Honor.

14:19:53 19 THE COURT: All right. So given that he is a
14:19:57 20 pro se defendant, I feel like I need to give a little bit
14:20:00 21 more leeway and a little bit more guidance because I think
14:20:03 22 that the case law merits that I do that, especially given
14:20:13 23 your position here.

14:20:16 24 So what I need to understand is for the -- let's
14:20:28 25 stick with the method claims. Tell me how these things work

14:20:32 1 because I get this, the database does this, or the something
14:20:37 2 does it. I don't know what Oracle's role is. I don't know
14:20:42 3 if the plaintiff knows. Can you help me understand how
14:20:46 4 these things work?

14:20:48 5 MR. BOBROW: Yes, Your Honor. So let me start
14:20:50 6 with the basic fact here that there are two products, let's
14:20:56 7 call them, that are being asserted against Oracle.

14:21:01 8 THE COURT: The ATG.

14:21:03 9 MR. BOBROW: ATG, right, so Oracle Database is
14:21:07 10 essentially a relational database management system. It
14:21:13 11 stores information, organizes information, and you can
14:21:17 12 create and write programs --

14:21:20 13 THE COURT: So what I'm trying to figure out is
14:21:23 14 who -- I mean, when you say that, is that like if you said I
14:21:29 15 have a license to use Excel, Microsoft Excel and I can put
14:21:37 16 in whatever I want and it will allow me to sort it in the
14:21:40 17 way that I want to sort it, or do whatever I want with it.
14:21:44 18 Is it like that, or is it where Oracle has some more role in
14:21:52 19 this storing information, you know, organizing information?

14:21:59 20 MR. BOBROW: So there are various ways that a
14:22:03 21 database can be accessed. And the databases are essentially
14:22:07 22 accessed through queries that are typically written in a
14:22:10 23 language called SQL. The question you're forming is who is
14:22:14 24 the one that -- who is doing that.

14:22:17 25 THE COURT: Who is putting the information --

14:22:18 1 whose information is in there? Who is putting the
14:22:21 2 information in there and who is doing the queries?

14:22:24 3 MR. BOBROW: So, for example a customer of
14:22:26 4 Oracle, someone who has got a license to Oracle Database can
14:22:31 5 store information in that database and can query that
14:22:34 6 database, and that's the typical use scenario is there is
14:22:38 7 someone who has purchased the product through license for
14:22:40 8 some reason and then is storing information in it and then
14:22:44 9 wants to query it to get information out. Often this is
14:22:49 10 financial information that gets stored. Sometimes it's
14:22:53 11 information about employees and, you know, their ID number,
14:22:56 12 their Social Security number, their date of hire, all of
14:22:59 13 that can get organized in tables and these tables have
14:23:02 14 essentially column headings and you can query the database
14:23:07 15 to do different things.

14:23:08 16 Now, there is the ability with these kinds of
14:23:13 17 products to develop applications. Okay? There are people
14:23:19 18 out there who make a living out of developing applications
14:23:22 19 to work with other software. And in the case of Oracle
14:23:27 20 Database, there are ways that developers, software
14:23:30 21 developers can develop programs that can then interact with
14:23:34 22 the database. And that's essentially what some of these
14:23:39 23 allegations are about in this case.

14:23:41 24 So if we start with the '720 patent, there are
14:23:47 25 two claims that are being asserted. Claim 1 is the method

14:23:52 1 claim, and claim 31 is the apparatus claim. All right? And
14:23:57 2 claim 1 is being asserted against Database and ATG, claim 31
14:24:06 3 only against Database. Both claims, claim 1 and 31 are
14:24:10 4 basically about searching a database. Right? So databases
14:24:16 5 get searched, queries are submitted to them. That's as old
14:24:20 6 as the hills. That's gone on forever.

14:24:22 7 What this patent, and it claims it in two
14:24:26 8 slightly different flavors between claim 1 and claim 31, but
14:24:29 9 what the claims are about is the query goes in, results are
14:24:33 10 returned, and if the number of results that are returned
14:24:37 11 exceed a predetermined number, something happens.

14:24:41 12 In the case of claim 1, the data gets truncated.
14:24:46 13 You truncate the returned entries. In the case of claim 31,
14:24:51 14 you reformat the search request. But in all cases, you're
14:24:56 15 comparing the numbers returned to a determined quantity and
14:25:01 16 saying ah-hah, is the amount above it or not. If the number
14:25:05 17 of entry returns exceeds that number, claim 1 you truncate,
14:25:10 18 claim 31 you reformat the query so as to reduce the amount
14:25:15 19 of data.

14:25:16 20 And in no case has the plaintiff identified
14:25:19 21 anywhere in either product where that occurs, either that it
14:25:25 22 occurs for purposes of the method or that that function is
14:25:29 23 in, in this case, Oracle Database.

14:25:33 24 So starting with --

14:25:34 25 THE COURT: All right. So let me just pull up

14:25:37 1 the Amended Complaint. Okay. So I'm just looking at the
14:26:09 2 exhibits here.

14:26:11 3 MR. BOBROW: Okay.

14:26:12 4 THE COURT: Because I want to see what he says.
14:26:15 5 First of all, I want to make sure I have the language that
14:26:18 6 you're referring to so when I ask him questions I get it.

14:26:21 7 MR. BOBROW: Sure.

14:26:22 8 THE COURT: You have the -- these are not really
14:26:28 9 set out very helpful.

14:26:30 10 MR. BOBROW: Your Honor, because if you have
14:26:33 11 Exhibit B, as in boy.

14:26:34 12 THE COURT: Yes.

14:26:35 13 MR. BOBROW: That's the one that discusses claim
14:26:37 14 1.

14:26:37 15 THE COURT: It's all the -- the pages are all
14:26:40 16 out of order, so I have parts of patents and then I have
14:26:44 17 parts of charts, and it's not -- okay. I got it. Okay.

14:26:48 18 So I have Exhibit B, claim 1, a method
14:26:53 19 implemented, so what is this element that you're talking
14:26:56 20 about here?

14:26:57 21 MR. BOBROW: So the element that I'm talking
14:26:59 22 about in Exhibit B appears on page 10. And the claim
14:27:05 23 element is set out to the left. And it says, if the
14:27:10 24 quantity --

14:27:12 25 THE COURT: Hold on. If the quantity, okay.

14:27:19 1 MR. BOBROW: So it says, "if the quantity
14:27:21 2 exceeds a specified amount, truncating data and displaying
14:27:26 3 the truncated data wherein the truncating reduces characters
14:27:32 4 in one or more entries in the database."

14:27:34 5 THE COURT: So that's like in the -- I'm
14:27:39 6 picturing what's in the patent where you had like author,
14:27:44 7 like --

14:27:45 8 MR. BOBROW: You might have a field that comes
14:27:47 9 back ID, then --

14:27:49 10 THE COURT: I wasn't sure how that was
14:27:51 11 truncating because it seemed like you were adding, start
14:27:54 12 with authors beginning with D, if you get too many it's like
14:27:58 13 D E.

14:27:59 14 MR. BOBROW: Right. If I have twenty-five
14:28:00 15 authors with the last name of D and twenty-five is my
14:28:05 16 predetermined limit and there are thirty-five and not
14:28:08 17 twenty-five, then what it's saying it's going to do is
14:28:11 18 truncate the data. That's what this is about.

14:28:14 19 If you look through everything that's cited here
14:28:16 20 as well as everything that's sighted in the Amended
14:28:19 21 Complaint itself, there is nothing that says that you
14:28:21 22 truncate in response to a determination --

14:28:25 23 THE COURT: So here is my question. In the
14:28:27 24 Exhibit B, there is just this statement that says Oracle
14:28:34 25 Database can determine if the quantity exceeds a specified

1 amount, truncating data and displaying the truncated data
2 wherein the truncating reduces characters in one or more
3 entries. I get it, that's just basically saying what's in
4 the claim, but this is a motion to dismiss, and he is
5 alleging that the element is met.

6 I mean, my problem with the method claims is
7 more I have no idea who is doing this other than a database
8 which I don't know -- I don't know who is responsible for
9 that.

10 So he says this element is met. And you just
11 told me there is no place where he says this element is met.
12 That's what I'm not understanding.

13 MR. BOBROW: Yes, Your Honor. He parrots the
14 claim language and says --

15 THE COURT: I get it, but I'm not that rigorous
16 when it comes to what I require to get past a motion to
17 dismiss. Right? If you say all the elements are met, for
18 me, you know, that might be enough, at least at this stage.
19 So what's the problem here?

20 MR. BOBROW: Well, the problem is that that is a
21 mere conclusion that is not supported by any sort of facts
22 or any sort of plausible inference that that's the case
23 because there is nothing that he's pointed to in any sort of
24 documentation that says in substance or in effect that there
25 is any truncation that occurs as a result of --

14:30:09 1 THE COURT: Again, you're not focused on my
14:30:13 2 concern which is that he's saying this element is met. And
14:30:17 3 you're like, well, there is no document. That's a
14:30:21 4 contention. I don't require you to have all your
14:30:25 5 contentions in a complaint. Right? I mean, for me, if the
14:30:30 6 complaint says they infringe claim 1 and they perform, you
14:30:34 7 know, the accused device performs each and every element,
14:30:40 8 that's probably good enough to get through a motion to
14:30:43 9 dismiss. Now you're like well, he said it, but he doesn't
14:30:47 10 give me specific documents. Okay? That seems like a lot to
14:30:53 11 ask for me for a motion to dismiss.

14:30:56 12 MR. BOBROW: Your Honor, we simply -- we
14:30:58 13 disagree. We think that the law is that you cannot simply
14:31:01 14 rely on parroting the claim language and that's all that has
14:31:05 15 happened here. There is a parroting of the claim language
14:31:08 16 and that's not enough to get past a motion to dismiss. You
14:31:11 17 need to provide some facts that make the allegation
14:31:14 18 plausible.

14:31:15 19 THE COURT: All right. He goes on and says you
14:31:19 20 can format data results, you can display results, okay,
14:31:23 21 that's not truncating. And then he says, Oracle Database
14:31:29 22 has group by clause to groups -- this isn't even in English.
14:31:36 23 Oracle Database has group by clause to groups a result into
14:31:41 24 subsets that have matching values for one or more columns.
14:31:45 25 Truncating reduces characters in one or more entries in the

14:31:50 1 selected database field and the truncated data represents
14:31:54 2 each of the entries in the selected database field.

14:31:58 3 So apparently he's using this group by and
14:32:07 4 saying --

14:32:13 5 MR. BOBROW: That's the problem is there is
14:32:15 6 nothing that says that you truncate if a number is exceeded.
14:32:19 7 If a number of results is exceeded, you truncate, that's
14:32:22 8 what the claim is about, or you reformat the search request
14:32:25 9 which is what the other claim is about. And none of these
14:32:28 10 documents say that. Some of them talk about grouping, some
14:32:31 11 of them talk about truncating, but none of them say we're
14:32:35 12 going to truncate if a number, a predetermined number is
14:32:38 13 exceeded. And that's been our complaint from the beginning.
14:32:41 14 Truncation and grouping and all of these functions are as
14:32:45 15 old as the hills. They're as old as databases. And what
14:32:49 16 this patent purported to add by way of the invention is
14:32:52 17 we're going to truncate if the number is exceeded.

14:32:55 18 So where is that allegation? Where is the --
14:32:58 19 the parroting is there, but there is no suggestion that
14:33:01 20 that's what Oracle actually does.

14:33:03 21 THE COURT: Does Oracle do that?

14:33:05 22 MR. BOBROW: Not that we know of. So that's the
14:33:09 23 issue. You know, at this point we haven't received an
14:33:14 24 allegation that says if -- that here is a program, or here
14:33:17 25 is a customer, or here is something where someone is doing

14:33:22 1 this, numbers exceeded, truncate, numbers exceeded, reformat
14:33:27 2 the search. We don't have any sort of notice that that's
14:33:31 3 happening. And that's just claim 1.

14:33:33 4 But as to ATG it's even worse because as to ATG,
14:33:38 5 the allegation for this same limitation relies on a
14:33:43 6 different product altogether. It relies on something called
14:33:46 7 Oracle Visual Builder which is an application development
14:33:50 8 tool. And there is no allegations, there is no document,
14:33:55 9 there is no substance, anything that suggesting that ATG and
14:34:01 10 Oracle Visual Builder work together to do this.

14:34:03 11 And then on claim 31, the claim charge is simply
14:34:09 12 blank. There is nothing there.

14:34:10 13 THE COURT: Yeah, that one there is --

14:34:12 14 MR. BOBROW: There is an element that's
14:34:14 15 completely missing, so we have the element that's missing,
14:34:16 16 claim 31, we have Visual Builder, and then for claim 1 we
14:34:20 17 have a hodgepodge of documents, none of which suggest what
14:34:23 18 was really the alleged invention here which is truncating
14:34:29 19 when a determined number of results are returned.

14:34:35 20 THE COURT: So on this one page 13 where you
14:34:39 21 have salary, you're truncating from 19,333.33, maybe you
14:34:47 22 would truncate the entry, but that's different from what you
14:34:49 23 say the claim requires which the claim requires is you're
14:34:52 24 bringing all these salaries in and it says if you have
14:34:56 25 salaries for more than twenty-five people, you have to

14:34:58 1 truncate down to twenty-five people.

14:35:00 2 MR. BOBROW: Yes, exactly. So the idea is, I
14:35:04 3 think what the patent -- I think that's very close but I
14:35:08 4 think it's more like I am going to figure out salaries for
14:35:12 5 my employees and I am going to cut it off at --

14:35:13 6 THE COURT: Mr. DeBellis, please sit down and
14:35:17 7 stop. If you're talking over there, you're not going to be
14:35:20 8 listening to him and I'm going to be asking questions about
14:35:22 9 what he's saying. And you're also distracting me from
14:35:25 10 understanding what's going on.

14:35:27 11 MR. BOBROW: So I think this idea is you have
14:35:29 12 this number, you get a set of results that is returned and
14:35:32 13 if that is greater than let's say twenty-five, then you do
14:35:34 14 the truncating. So if you had results for say thirty-five
14:35:38 15 employees, the idea would be ah-hah, in that case that's
14:35:41 16 over twenty-five, so I'm going to shrink the data down in
14:35:45 17 some fashion.

14:35:47 18 What's on that page of the Amended Complaint is
14:35:52 19 actually, and I think you said it was on page 13.

14:35:57 20 THE COURT: 12. Sorry, I was looking at this
14:36:00 21 start with the salaries.

14:36:05 22 MR. BOBROW: Yes. So there what that's doing is
14:36:09 23 it is taking the numbers that have decimals and --

14:36:13 24 THE COURT: That's not truncating.

14:36:14 25 MR. BOBROW: That's not truncating, but it's not

1 truncating based upon a predetermined amount, it's just
2 saying a predetermined number of entries. It's saying if I
3 have six entries, I'll truncate those. If I have
4 thirty-seven entries I'll truncate those. If I have a
5 million, I'll truncate those. That's what that is saying.
6 And there is nothing in here that is saying that that's tied
7 to some number that you have determined and says ah-hah, if
8 it exceeds that, then I'll truncate.

9 So we have that for claim 1, we have the Visual
10 Builder problem, the fact that there is no suggestion that
11 that marries up in any way with ATG and then the blank claim
12 chart for claim 31.

13 THE COURT: What about the other apparatus claim
14 for the other patent?

15 MR. BOBROW: For the '100 patent, right. So the
16 '100 patent is of a slightly different flavor than the '720.
17 And what it seems to focus on is this idea of doing
18 searching, quote unquote, on-the-fly. So I'm receiving
19 on-the-fly queries, they go to an on-the-fly report
20 generator, these reports are generated as it says,
21 on-the-fly and essentially it's the same setup, claim 1 is
22 asserted against database in ATG and claim 32 is asserted
23 against database.

24 So you asked about the apparatus claim there,
25 claim 32. So as for that claim, this is the one that --

14:37:51 1 where you have a search on-the-fly report generator. It
14:37:55 2 receives queries, search request from a search on-the-fly
14:38:02 3 search engine. Then they have something called a query
14:38:06 4 tweaker, and this query tweaker receives the on-the-fly
14:38:11 5 search request or query and it makes transformations or
14:38:15 6 corrections to it. And then there is something that then
14:38:17 7 generates reports after that. Okay? So there needs to be
14:38:21 8 this query tweaker and there needs to be an on-the-fly
14:38:25 9 search report generator and an on-the-fly search engine.

14:38:28 10 Now, when you look at what is pleaded in the
14:38:31 11 claim chart for this, which is Exhibit G, if you turn to the
14:38:48 12 element -- I'm on pages -- I'm on page 3, Your Honor, of --

14:38:53 13 THE COURT: I got it.

14:38:54 14 MR. BOBROW: Okay. And over on the left-hand
14:38:57 15 side is the claim language which talks about a search
14:39:00 16 on-the-fly report generator that receives raw queries from
14:39:07 17 the on-the-fly search engine and generates a search report
14:39:11 18 and it goes on from there. What they plead to try to meet
14:39:14 19 this limitation and suggest that at least it's plausible
14:39:17 20 that it's there is something from what's called an
14:39:21 21 Application Developer Guide, and it's talking about dynamic
14:39:28 22 SQL.

14:39:29 23 I think -- remember, this is an apparatus claim,
14:39:31 24 and what this is saying over on the right-hand side of
14:39:34 25 page 3 is is that Dynamic SQL is not part of Oracle

14:39:42 1 Database, it's something that could be used to write a
14:39:45 2 program for Oracle Database, and it starts by saying Dynamic
14:39:52 3 SQL enabled to write programs that reference SQL statements
14:39:55 4 whose full text is not known until run time. It enables you
14:40:00 5 to write programs.

14:40:01 6 It goes on from there towards the bottom of that
14:40:04 7 same quoted passage, Dynamic SQL enables you to write
14:40:09 8 application code that is reusable because the code defines a
14:40:12 9 process. It goes on from there.

14:40:14 10 That's what SQL is. SQL is a language that
14:40:18 11 allows you to write programs and statements and what have
14:40:21 12 you. But the issue here is this is an apparatus claim being
14:40:27 13 asserted against Oracle Database, and all this says is that
14:40:31 14 you can write dynamic query statements. It doesn't say that
14:40:36 15 Oracle has this, that it uses this in an on-the-fly report
14:40:40 16 generator or that it uses it in an on-the-fly search engine,
14:40:44 17 it says here is SQL, here is a dynamic version of it that
14:40:48 18 allows to you reference SQL statements and enables you to
14:40:54 19 write application code. But where is the allegation, the
14:40:58 20 suggestion, the document, the anything that says that that
14:41:01 21 is part of Oracle Database?

14:41:04 22 THE COURT: So you can use SQL to write a
14:41:07 23 program to use on Oracle Database?

14:41:11 24 MR. BOBROW: Yes.

14:41:12 25 THE COURT: They're saying one of the ways you

14:41:15 1 can use SQL is to have dynamic searches.

14:41:22 2 MR. BOBROW: Yes.

14:41:23 3 THE COURT: But they never say someone has used
14:41:29 4 Dynamic SQL to write dynamic search programs that are used
14:41:34 5 on the Oracle Database?

14:41:37 6 MR. BOBROW: Right. That there is a search
14:41:39 7 on-the-fly report generator, which is what the claim
14:41:42 8 requires, that receives raw queries from a search on-the-fly
14:41:47 9 search engine. We don't see that. There is no allegation,
14:41:50 10 no document, no suggestion that Oracle Database has been --
14:41:56 11 that there is an application that is now part of that
14:41:59 12 database that does that. So is there some customer out
14:42:03 13 there in the world that has done that? There is no pleading
14:42:06 14 to that effect. Has Oracle done that internally? There is
14:42:10 15 no pleading to that effect, so it's not there.

14:42:13 16 THE COURT: And even if you could use it to do a
14:42:15 17 dynamic search, you need a report generator; right?

14:42:22 18 MR. BOBROW: Correct, it's got to be an
14:42:25 19 on-the-fly generator and that's got to receive on-the-fly
14:42:28 20 queries.

14:42:29 21 THE COURT: Got it.

14:42:30 22 MR. BOBROW: So both of those aspects of being
14:42:32 23 on-the-fly have to be there. And we simply don't see that
14:42:35 24 in the pleading. Again, there is the parroting of the
14:42:40 25 language, but when you look at the, essentially the -- what

14:42:43 1 they use as support for it to provide some sort of factual
14:42:49 2 allegation, it simply provides for the idea that gee, there
14:42:53 3 are application developers out there that can use SQL to do
14:42:56 4 something on-the-fly, to write something in a dynamic way,
14:43:00 5 and that simply hasn't been asserted or shown.

14:43:05 6 As it relates to the method claim of the '100
14:43:08 7 patent, again, this is the one that is asserted against
14:43:13 8 Database and against ATG, there are simply similar problems
14:43:19 9 here as there are for the apparatus claim. There is the
14:43:23 10 on-the-fly problem for claim 1 as against the Oracle
14:43:27 11 Database. The claim also requires that when you do one of
14:43:31 12 these searches that essentially you get results back, you
14:43:34 13 get search results and then a template is created that
14:43:39 14 essentially corresponds with those results and that template
14:43:44 15 must have links in it to the data category that you are
14:43:47 16 searching. I think the idea there is I might do a search, a
14:43:51 17 template is created with links in it, that means if I run
14:43:54 18 the same search two months later, I'm trying to get data on
14:43:58 19 employees or something, I don't need to recreate the search,
14:44:01 20 there is a template for it. With the links you're getting
14:44:04 21 the updated data that might have been put in or deleted from
14:44:08 22 the database. So I think that's the idea of it. But
14:44:11 23 nothing in the pleading says that there are links in any of
14:44:14 24 the Oracle Database templates.

14:44:16 25 And as far as the -- as far as ATG goes, this is

14:44:22 1 one where there are two issues as well. One issue is that
14:44:26 2 there is no suggestion here that Oracle ATG searches a
14:44:32 3 database. Oracle ATG is essentially a web tool. It allows
14:44:37 4 people to build and support web pages. And what the search
14:44:43 5 function that they point to for ATG does is it searches
14:44:47 6 what's called an index which is essentially an abstraction
14:44:51 7 of all kinds of data that you might collect in one way or
14:44:54 8 another, maybe from a document, maybe from a database, maybe
14:44:57 9 from anywhere. But the index is what is searched by the ATG
14:45:04 10 search function.

14:45:05 11 THE COURT: But is that a question of claim
14:45:07 12 construction whether the index has sufficient data to be a
14:45:14 13 database?

14:45:14 14 MR. BOBROW: I don't think so, Your Honor,
14:45:16 15 because a database, as I mentioned before, is essentially
14:45:20 16 the data management construct with tables and relations and
14:45:25 17 columns, that's what a database is. This index is just an
14:45:31 18 abstraction. It could be a document. To say that a
14:45:34 19 database is a word document would be absurd. But that's
14:45:37 20 what that index could be is just an abstraction of data, not
14:45:41 21 the database.

14:45:43 22 And, in fact, the documents that are attached to
14:45:47 23 the pleadings distinguish between a database on the one hand
14:45:51 24 and the index on the other. A database could have
14:45:54 25 information in it that is put into the index, but it's not

14:45:59 1 -- the index is not a database. So that's what's being
14:46:02 2 searched.

14:46:02 3 THE COURT: I guess I'm not sure -- okay, you
14:46:07 4 say that, but I just don't know if that's an issue of claim
14:46:10 5 construction. What counts as a database? I don't know the
14:46:13 6 answer to that.

14:46:14 7 MR. BOBROW: I understand, Your Honor.

14:46:15 8 THE COURT: As soon as you said oh, it's an
14:46:18 9 index, the index has certain data, okay, well, maybe that
14:46:22 10 still falls within the claim, the language database
14:46:27 11 depending on how that's construed. I don't know.

14:46:30 12 MR. BOBROW: I would only submit, Your Honor,
14:46:32 13 and I understand fully what you're saying, my only response
14:46:35 14 to it is that the documents that are referred to here are
14:46:41 15 simply drawing that distinction that I mentioned. So I
14:46:45 16 think that that would be a farfetched construction to say
14:46:49 17 the least.

14:46:50 18 In all events, there is another problem with the
14:46:53 19 ATG pleading which is that there is no allegation here with
14:46:58 20 any sort of factual support that the template reflects the
14:47:02 21 search results. The templates that are being pointed to
14:47:06 22 here are essentially like product templates where let's say
14:47:10 23 that your -- you have a website and you're selling
14:47:14 24 automobiles, and the -- you know, the template that's
14:47:17 25 referred to in these papers is the template that says well,

14:47:20 1 the photo of the car goes here. The information about how
14:47:24 2 many cylinders are in the car is here. Its gas mileage goes
14:47:29 3 here. That's the template. The template of the patent is a
14:47:32 4 template of the search results when you query the database,
14:47:36 5 so these are essentially apples and oranges.

14:47:39 6 Your Honor, we think that the pleading simply
14:47:41 7 doesn't go far enough. Yes, it parrots the claim language,
14:47:46 8 but when you look at the facts that are pleaded, it simply
14:47:51 9 goes astray and doesn't plausibly allege infringement of any
14:47:56 10 of the asserted claims.

14:47:58 11 THE COURT: Okay. All right. Let's start with
14:48:09 12 the pleading in Exhibit C which is asserting the apparatus
14:48:22 13 claim, claim 31 of the '720 patent against Oracle Database.
14:48:28 14 And on page 9 of Exhibit C, there is a whole part of a claim
14:48:43 15 that is blank.

14:48:44 16 MR. RAMEY: Your Honor, may I approach?

14:48:46 17 THE COURT: Yes.

14:48:49 18 MR. RAMEY: This is the presentation for
14:48:52 19 Dr. DeBellis. Thank you, Your Honor.

14:49:04 20 THE COURT: Is this the same thing that was sent
14:49:06 21 to us before?

14:49:07 22 DR. DeBELLIS: It was sent yesterday, on Friday.

14:49:09 23 THE COURT: All right. So I'm asking, though,
14:49:13 24 about this question, which is Exhibit C, claim 31 of the
14:49:25 25 '720 patent talking about wherein the request analyzing

14:49:28 1 requests an truncater, the truncater determining the size of
14:49:31 2 the data field, blah, blah, blah, nothing, there is no
14:49:34 3 allegation that that's met, no support for it, nothing.

14:49:38 4 DR. DeBELLIS: Your Honor, I'm sorry, but I
14:49:40 5 don't have a copy of the Exhibit C on hand.

14:49:44 6 THE COURT: This is the pleading that you're
14:49:46 7 here to defend, so I don't know what to tell you because I
14:49:52 8 would have expected you to have a copy of the pleading that
14:49:55 9 you think you're trying to say is sufficient.

14:50:07 10 DR. DeBELLIS: Unfortunately I did not bring --
14:50:11 11 I had two -- I don't have a copy of an exhibit in front of
14:50:14 12 me. I compiled a relatively simple argument for why I
14:50:20 13 believe --

14:50:21 14 THE COURT: That's not what I'm asking, though.
14:50:23 15 I get it, but this claim is not -- will you give up this
14:50:26 16 claim if this claim is not in this relatively brief whatever
14:50:31 17 that you have?

14:50:33 18 MR. RAMEY: Your Honor, may I interject? I
14:50:35 19 don't mean to step on Dr. DeBellis' foot. That wherein
14:50:38 20 clause simply limits the box that was before that, so the
14:50:41 21 same figure can be used for the box --

14:50:44 22 THE COURT: Well, that's not -- that's you,
14:50:46 23 that's adding to the pleading. That is not in the pleading;
14:50:49 24 right?

14:50:49 25 MR. RAMEY: We did repeat that, the same

14:50:52 1 illustration to the right of that claim, correct, Your
14:50:54 2 Honor.

14:50:54 3 THE COURT: No, it's blank.

14:50:56 4 MR. RAMEY: Correct, Your Honor. Yes, Your
14:50:59 5 Honor. All I'm saying it was meant to be the same
14:51:01 6 illustration from the previous claim block.

14:51:04 7 THE COURT: Except that the previous claim says
14:51:07 8 zero, does not use the word truncating, does not talk about
14:51:11 9 anything being truncated, so I don't understand how you're
14:51:16 10 saying that helps.

14:51:17 11 MR. RAMEY: My apologies. I was just saying
14:51:19 12 what we intended to get it from.

14:51:37 13 DR. DeBELLIS: I'm sorry, Your Honor. I
14:51:39 14 apologize about being poorly prepared. I did put these
14:51:43 15 together myself, and I apologize, I'm not sure exactly -- I
14:51:52 16 don't have that in front of me.

14:52:01 17 THE COURT: Okay. Well, so what is t your
14:52:06 18 evidence that any Oracle product meets that element? Do you
14:52:12 19 have the patent with you?

14:52:43 20 DR. DeBELLIS: Your Honor, I did not -- I was
14:52:45 21 not able to bring my laptop and unfortunately a lot of the
14:52:48 22 papers that I had prepared for the case were in that
14:52:53 23 briefcase and I left it at the hotel. And I do apologize.
14:53:00 24 I don't have my patents and I don't have my copy of the
14:53:03 25 amended complaints with the exhibits. And no disrespect was

14:53:12 1 intended at all.

14:53:14 2 THE COURT: I appreciate that. I just don't
14:53:16 3 know how you expect me to rule -- I'm giving you an
14:53:24 4 opportunity to explain to me how this pleading is
14:53:28 5 sufficient, and you can't because you don't have -- you
14:53:33 6 don't even have the patent or the claims, or anything. So
14:53:38 7 what is your basis -- I guess there is an element in claim
14:53:43 8 31 of the '720 patent that says, "Wherein the request
14:53:48 9 analyzer comprises a truncater. The truncater determining a
14:53:53 10 size of a data field comparing the size to a specified limit
14:53:57 11 and reformatting the formatted search request wherein the
14:54:02 12 reformatted search request causes the database driver to
14:54:05 13 return data with characters reduced in one or more entries
14:54:10 14 and the return data represents each entry in the data
14:54:12 15 field."

14:54:13 16 There is nothing in the claim chart that you
14:54:16 17 attach that says that this element is met. There is no
14:54:21 18 support for anything to say that this element is met. What
14:54:28 19 am I supposed to do with that? I can't -- they point out
14:54:32 20 you haven't alleged that it's met. You can't tell me that
14:54:36 21 it has been, right?

14:54:38 22 DR. DeBELLIS: Yes, Your Honor.

14:54:43 23 THE COURT: So if I were to give you an
14:54:45 24 opportunity to amend, what would you say, that the Oracle
14:54:53 25 Database meets that limitation where it truncates it,

14:54:56 1 compares it to a -- compares it to a specified limit and
14:55:06 2 then reformats? What is it that you would point to to say
14:55:10 3 that the Oracle Database does that?

14:55:34 4 DR. DeBELLIS: I'm not prepared to answer that
14:55:37 5 at this time, Your Honor. I'm sorry.

14:55:38 6 THE COURT: All right. Sir, I appreciate that
14:55:42 7 you left your laptop back at the hotel, but if you expect to
14:55:47 8 proceed pro se in this case where we would have a jury over
14:55:53 9 there, how is it that you expect to prosecute your case?

14:55:56 10 DR. DeBELLIS: Your Honor, I had -- it's been a
14:56:01 11 lot of work and unfortunately there are flaws in all of it,
14:56:07 12 including the fact that I'm managing my own papers and
14:56:10 13 trying to keep everything straight. And that's no excuse,
14:56:14 14 clearly. I focused for this particular opportunity on a
14:56:21 15 specific scenario which was revolving around the claim 1 of
14:56:26 16 the '100 patent, and that was what I was working on. I
14:56:32 17 moved everything into my small briefcase and when I found
14:56:35 18 out I couldn't bring my laptop, I left everything else. And
14:56:39 19 it's also escaped me because I'm quite nervous.

14:56:44 20 THE COURT: Do you have any basis to believe
14:56:47 21 that the Oracle Database compares a result to a set limit?

14:56:57 22 DR. DeBELLIS: Yes.

14:56:57 23 THE COURT: And then truncates it, or reformats
14:57:04 24 it?

14:57:05 25 DR. DeBELLIS: Yes, Your Honor.

14:57:06 1 THE COURT: What is your basis for saying that?

14:57:09 2 DR. DeBELLIS: Well, what I have is basically
14:57:12 3 reading from the language of their documentation, I reviewed
14:57:18 4 thousands -- I have limited access to information, and the
14:57:22 5 whole purpose of hoping for discovery was to conclude that
14:57:30 6 in analyzing, for example, claim 1 of the '100 patent --

14:57:34 7 THE COURT: I'm still on the '720 patent. I
14:57:38 8 can't just jump to that and say you're good to go. I'm
14:57:42 9 starting with the '720 patent. You still want to assert
14:57:46 10 that patent, right?

14:57:48 11 DR. DeBELLIS: Yes.

14:57:48 12 THE COURT: They have moved to dismiss it. They
14:57:51 13 say there is -- for the apparatus claim, claim 31, you don't
14:57:55 14 even try to assert that one of the elements is present.
14:57:59 15 There is a big old blank in the chart. There is. So I
14:58:06 16 don't see how -- it shouldn't -- that claim shouldn't be
14:58:11 17 dismissed. The question is, is it possible for you to say
14:58:18 18 anything that would support you and all you're telling me is
14:58:26 19 yeah, there are some documents, but that's not -- that
14:58:30 20 doesn't -- and you want discovery, but in order for you to
14:58:35 21 go forward, you should have a good faith basis to believe
14:58:40 22 that they're infringing.

14:58:44 23 DR. DeBELLIS: Yes. Yes, Your Honor. So on
14:59:36 24 page 11 of the example shows truncation of a variety of
14:59:49 25 numerical information, the 59 from 269 was truncated --

14:59:55 1 THE COURT: I'm sorry, I don't see -- what page
14:59:59 2 are you talking about?

15:00:00 3 DR. DeBELLIS: Page 11 of the --

15:00:02 4 THE COURT: Of what exhibit?

15:00:03 5 MR. RAMEY: Your Honor, page 11 of the First
15:00:06 6 Amended Complaint.

15:00:33 7 THE COURT: And so where is the -- that's
15:00:46 8 truncating -- that's truncating the digits on the result.
15:00:53 9 Where are you talking about truncating the number of -- if
15:01:05 10 the quantity exceeds a specified amount, truncating the
15:01:11 11 data. Where is the steps number?

15:01:40 12 DR. DeBELLIS: In this case there is no evidence
15:01:42 13 of that in this particular example.

15:02:02 14 THE COURT: Okay. How about for claim 1, I
15:02:21 15 guess that's the same issue, that's Exhibit B, so that is
15:02:28 16 claim 1 that you just pointed me to. So I guess my question
15:02:33 17 is, it seems like I need to dismiss these counts. The
15:02:38 18 question is whether I do so with prejudice or not, meaning
15:02:42 19 that you can't then bring them again.

15:02:44 20 DR. DeBELLIS: Yes, Your Honor.

15:02:45 21 THE COURT: So if I were to give you an
15:02:47 22 opportunity, what is it that you would point me to that
15:02:50 23 shows you are meeting the element of the claim?

15:02:59 24 DR. DeBELLIS: Well, I would delve to find a
15:03:04 25 better example, Your Honor, where the number of examples was

15:03:07 1 truncated, not just the numerical values. The value of
15:03:16 2 truncation --

15:03:17 3 THE COURT: It's not just truncating, though,
15:03:20 4 it's that there is a set number beforehand. Right? It's
15:03:24 5 not just that you get something and it's like I don't feel
15:03:28 6 like looking at all those numbers after the period. It's
15:03:31 7 that there is a set number. And so my question is, you had
15:03:34 8 a number of opportunities already to identify the specified
15:03:41 9 amount. What is it that makes you think that you could do
15:03:45 10 so now?

15:03:47 11 DR. DeBELLIS: I think I would -- I guess the
15:04:00 12 best I can say, Your Honor, is I would make an effort to
15:04:05 13 find an example that limits the number. The reduction is
15:04:08 14 for -- the purpose of the truncation is to display all the
15:04:12 15 possible scenarios, all the possible results in a compressed
15:04:16 16 manner. In this particular example, it's not a good example
15:04:20 17 because the number of individuals has not reduced. In other
15:04:25 18 words, if the limit was five, let's say the idea is these
15:04:29 19 absolute numbers would be reduced down by one digit or
15:04:33 20 possibly two digits to allow the full spectrum of
15:04:37 21 understanding, and the idea that the alphanumeric spectrum,
15:04:42 22 0 to 9, A through Z is able to be displayed, gives you a
15:04:47 23 perspective on the data. This example does not. That is
15:04:51 24 entirely my fault. And I claim no excuses except for the
15:04:57 25 fact that again, I'm limited by my own two hands and

15:05:00 1 twenty-four hours in a day to put all of this together. And
15:05:03 2 again, the lack of precision, the missing pages is no
15:05:06 3 intentional disrespect, Your Honor.

15:05:08 4 And I am at a loss as well because I'm quite
15:05:13 5 obviously nervous and I can't think clearly, but I would
15:05:17 6 make an effort to provide you with a better example.

15:05:26 7 THE COURT: What about the assertion that with
15:05:30 8 respect to ATG, all of your support comes from the Visual
15:05:36 9 Builder and there are no allegations whatsoever that the
15:05:41 10 Visual Builder is used, must be used, is used, with ATG?

15:05:47 11 DR. DeBELLIS: Well, I -- at a certain point I
15:05:52 12 started to look at focusing my case on the software as a
15:05:59 13 service and the idea that all of these products work
15:06:02 14 together in concert. The idea that as an apparatus claim it
15:06:08 15 applies against the fact that Oracle designs the software,
15:06:13 16 houses it on servers and then provides that combined service
15:06:17 17 as OCI to its customers basically I feel makes it such that
15:06:27 18 pointing out which particular product does or doesn't, the
15:06:30 19 entire process itself included -- and with additional
15:06:33 20 discovery being able to look at the pseudo codes, being able
15:06:36 21 to look at what is more than just publicly available on the
15:06:39 22 internet --

15:06:41 23 THE COURT: So based on what you know of the
15:06:43 24 product, does it do this or not?

15:06:45 25 DR. DeBELLIS: Yes.

15:06:46 1 THE COURT: So what is your evidence for saying
15:06:48 2 that the Visual Builder is used with the ATG? You're
15:06:53 3 accusing the ATG product. When you are asked to support
15:06:58 4 your allegation, you're referring to something different
15:07:01 5 that you don't even say is part of the ATG product or used
15:07:05 6 with the ATG product. So what is your basis for that?

15:07:13 7 DR. DeBELLIS: Well, it just was best belief
15:07:16 8 based upon the interpretation -- again, reading through the
15:07:22 9 documentation.

15:07:23 10 THE COURT: So what documentation suggest that
15:07:27 11 your reference to the Visual Builder is relevant to the
15:07:35 12 accusation of infringement to the ATG?

15:07:38 13 DR. DeBELLIS: The links and the sources that I
15:07:54 14 have in the material that I provided you with today does not
15:07:57 15 break down which products the references come from.

15:08:08 16 THE COURT: All right. So it doesn't seem that
15:08:10 17 there are -- I think you have even admitted that there are
15:08:15 18 no sufficient allegations with respect to the '720 patent
15:08:18 19 with respect to the Oracle Database or ATG.

15:08:22 20 DR. DeBELLIS: Yes.

15:08:23 21 THE COURT: So I will dismiss those. We'll
15:08:27 22 discuss in a moment how I want to proceed. But now we can
15:08:31 23 move to the '100 patent, searching on-the-fly.

15:08:44 24 So where is there anything with respect to claim
15:08:49 25 32 that -- I mean, it just says that you can use SQL that

15:08:58 1 let's you write programs that you can do dynamic searches
15:09:04 2 on, but where is there anything that says there is a search
15:09:11 3 on-the-fly report that's generated, anything like that?

15:09:14 4 DR. DeBELLIS: If I may, Your Honor, reference
15:09:17 5 the materials I provided today.

15:09:19 6 THE COURT: Okay.

15:09:27 7 DR. DeBELLIS: If we look at page 15.

15:09:34 8 THE COURT: Okay.

15:09:35 9 DR. DeBELLIS: On the left we have the absolute,
15:09:39 10 the claims, and on the right we have material directly from
15:09:44 11 Oracle, from their -- I'm losing my -- basically what it is
15:09:54 12 is it's their documentation from their manuals that are
15:09:58 13 available online. And on the left is a preamble, you have
15:10:01 14 an apparatus that generates a search, on-the-fly search
15:10:04 15 report and from Oracle it says, and I quote, "Oracle
15:10:07 16 Database's computer program generates a data report on
15:10:14 17 Oracle customer's computers." And this is a software as a
15:10:18 18 service.

15:10:18 19 And the first limitation shows that a search
15:10:24 20 on-the-fly report generator receives a raw query from the
15:10:28 21 search on-the-fly search report. A search report and report
15:10:31 22 templates are created. If you look at the Oracle
15:10:35 23 information on the right, you'll see that a SQL statement
15:10:40 24 can change on-the-fly. And that's using Dynamic SQL, which
15:10:44 25 allows for a dynamic query form. And that's from their

15:10:52 1 database, Oracle Database release 21.

15:10:54 2 The second limitation talks about a query
15:10:59 3 tweaker. The query tweaker is defined as a -- is defined as
15:11:06 4 performing transformations and corrections. And from my
15:11:09 5 specifications --

15:11:10 6 THE COURT: So just so I understand, this
15:11:12 7 page 16, that is from your patent?

15:11:16 8 DR. DeBELLIS: I'm sorry?

15:11:17 9 THE COURT: Page 16 of your slide.

15:11:18 10 DR. DeBELLIS: Yeah, that's an example from my
15:11:21 11 patent showing what a commercial --

15:11:23 12 THE COURT: That's your patent, that's not a
15:11:24 13 commercial embodiment from Oracle?

15:11:27 14 DR. DeBELLIS: No, it's not, it's just an
15:11:29 15 example showing the way that the truncation works.

15:11:31 16 THE COURT: Okay. So --

15:11:41 17 DR. DeBELLIS: So the first limitation, raw
15:11:44 18 queries and a search report and a template, when you look at
15:11:47 19 Oracle, they create SQL statements on-the-fly.

15:11:52 20 THE COURT: It can. You say it can. Is there
15:11:54 21 any evidence that anyone does this?

15:12:00 22 DR. DeBELLIS: From their documentation, they
15:12:04 23 advertise that their clients can do this both in their
15:12:08 24 purchased products and as well as on their servers with OCI,
15:12:15 25 the cloud, on the cloud as a service, software as a service.

15:12:20 1 And this is something that's generically available to their
15:12:24 2 customers.

15:12:25 3 Before there was static SQL which all the
15:12:28 4 characters had to be predefined. They now offer Dynamic SQL
15:12:33 5 which allows the flexibility of creating no longer a static
15:12:38 6 search, but a dynamic search.

15:12:42 7 And --

15:12:43 8 THE COURT: Where is the report generator?

15:12:45 9 DR. DeBELLIS: So then the report generator, as
15:12:49 10 you move forward --

15:12:50 11 THE COURT: I'm just looking at first
15:12:53 12 limitation, a search on-the-fly report generator that
15:12:57 13 receives raw queries. Where do you allege the search
15:13:00 14 on-the-fly report generator?

15:13:05 15 DR. DeBELLIS: Well, if you look at the first
15:13:09 16 claim 1 of the '100 patent, page -- I have a reference to
15:13:20 17 report generator on page 5, this is the -- it's the same
15:13:29 18 language, but this is the first limitation is receiving a
15:13:33 19 query --

15:13:33 20 THE COURT: I'm sorry, I thought we were talking
15:13:35 21 about the claim 32.

15:13:43 22 DR. DeBELLIS: Yes, but --

15:13:44 23 THE COURT: So why are you now sending me back
15:13:48 24 to a different claim? Can we just figure out -- I'm trying
15:13:52 25 to figure out if you have asserted in non-conclusory or even

15:13:59 1 at all terms that the elements of claim 32 are met by the
15:14:07 2 Oracle Database. And I see you're saying the Oracle
15:14:11 3 Database can use Dynamic SQL, the Dynamic SQL can do
15:14:18 4 on-the-fly searches, or can change on-the-fly at runtime,
15:14:24 5 but where are you asserting that there is a search
15:14:30 6 on-the-fly report generator that does what is claimed?

15:14:36 7 DR. DeBELLIS: Well, the search on-the-fly
15:14:40 8 report generator receives raw queries and creates a report
15:14:45 9 template and that's what the Dynamic SQL allows them to
15:14:52 10 create a dynamic search --

15:14:52 11 THE COURT: Where do you say that? I'm just
15:14:52 12 looking at what you have for the first limitation. I'm
15:14:55 13 looking at page 17 of your program.

15:14:58 14 DR. DeBELLIS: Yes.

15:14:58 15 THE COURT: Which is not in your complaint, but
15:15:00 16 I'm trying to figure out what you're going to allege. So
15:15:04 17 where are you talking about this template? I don't see --
15:15:08 18 what you're telling me right now, where is this alleged?

15:15:11 19 DR. DeBELLIS: Well, I don't mention the
15:15:34 20 templates until page 20, Your Honor. And this is from the
15:15:43 21 Oracle -- the sources on page 21, I believe, where it states
15:15:53 22 the source is -- basically from their report templates,
15:16:04 23 report column templates provides you with the control over
15:16:07 24 the results and a row from the SQL query, this type of
15:16:11 25 template defines a cell, not an entire row.

15:16:14 1 Basically these are quotes specifically from --
15:16:18 2 and in this particular case, I don't have the exact
15:16:20 3 reference here, but this is from their documentation
15:16:23 4 defining how you create a report template using the Oracle
15:16:33 5 Cloud software as a service.

15:16:36 6 And they define views and they define group
15:16:43 7 by's. And in the definition, the query tweaker, which is
15:16:46 8 the second limitation, we talk about transformations and
15:16:50 9 corrections. And in my specifications, I define
15:16:53 10 transformations and corrections as joined and grouped by's
15:16:58 11 in the database, Oracle Database.

15:17:01 12 THE COURT: Is this in your complaint, in your
15:17:04 13 Amended Complaint or is this something new? It doesn't
15:17:06 14 matter what you have in here. This isn't what's the subject
15:17:10 15 of the motion. Is this new stuff you came up with, or is
15:17:13 16 this in your Amended Complaint?

15:17:15 17 DR. DeBELLIS: This is an example --

15:17:18 18 THE COURT: Is it in your Amended Complaint?
15:17:20 19 You can't just say stuff -- I have to go by what's in your
15:17:25 20 complaint, so if this is all new, maybe that tells me that I
15:17:29 21 should let you try and amend again, but you can't use this
15:17:33 22 new stuff to save your complaint that doesn't have it. This
15:17:39 23 is not a pleading, this is just a presentation. So I need
15:17:43 24 to understand, is this new, or is this what -- are you
15:17:47 25 taking this out of your complaint?

15:17:51 1 DR. DeBELLIS: Your Honor, I'm sorry to be
15:17:53 2 difficult. When you say new, these --

15:17:56 3 THE COURT: Is it in your complaint? Is what
15:17:59 4 you're telling me here in your Amended Complaint?

15:18:02 5 DR. DeBELLIS: Yes, I believe --

15:18:03 6 THE COURT: Show me. Don't use this, show me
15:18:06 7 using the complaint. The complaint is what's important. So
15:18:10 8 show me where you have alleged these things using the
15:18:14 9 Amended Complaint.

15:18:54 10 DR. DeBELLIS: On page 15 of the Amended
15:19:00 11 Complaint, 34 says --

15:19:02 12 THE COURT: Which exhibit, or just the complaint
15:19:04 13 itself?

15:19:05 14 DR. DeBELLIS: Just the complaint itself.
15:19:07 15 Method, number 34, says method claim, see Exhibit F, an
15:19:11 16 apparatus claim each recite a query tweaker. The
15:19:18 17 specifications of the '100 discloses that the query tweaker
15:19:22 18 receives a raw query and performs special transformations
15:19:24 19 and corrections including joint operations based on the
15:19:25 20 database scheme applying filters and plug ins and applying
15:19:29 21 group by clauses. Oracle Database discloses Oracle Database
15:19:34 22 includes joins, filters, plug ins and group by clauses to
15:19:38 23 perform transformations and corrections on the received
15:19:41 24 query.

15:19:45 25 Method claim 1 exhibit F, an apparatus claim 32

15:19:50 1 each recite a report template. Oracle discloses use of
15:19:54 2 report templates. Oracle discloses a wide variety of report
15:19:59 3 templates, for example, Oracle discloses name column
15:20:02 4 templates.

15:20:04 5 Upon information and belief --

15:20:08 6 THE COURT: Hold on. Hold on.

15:20:10 7 DR. DeBELLIS: Sorry.

15:20:21 8 THE COURT: So where is the on-the-fly? You say
15:20:26 9 Oracle discloses a variety of report templates, for example,
15:20:32 10 name column templates. Where is the reference to the
15:20:36 11 on-the-fly aspect and the on-the-fly generator report?

15:20:53 12 DR. DeBELLIS: In the Amended Complaint, you're
15:21:01 13 saying?

15:21:02 14 THE COURT: That's the only thing that really
15:21:04 15 matters.

15:21:08 16 DR. DeBELLIS: Yeah, I don't -- I didn't find
15:21:11 17 that reference to on-the-fly in quotations, only after the
15:21:18 18 initial Amended Complaint, Your Honor. So if you're asking
15:21:22 19 me -- the reference in the materials I provided today of
15:21:26 20 on-the-fly within their documentation I found subsequent to
15:21:30 21 the Amended Complaint.

15:21:42 22 THE COURT: Okay. Anything else you want to
15:21:58 23 say?

15:22:00 24 DR. DeBELLIS: Again, I do apologize. I had
15:22:04 25 gone through claim 1 coming up with very specific points

1 where it essentially reads exactly on everything that the
2 claims are made from their documentation, but it's all in
3 that supplement, it's not in the original complaint. So
4 that's problematic, I realize.

5 THE COURT: All right.

6 DR. DeBELLIS: I thought I could provide this as
7 additional support information.

8 THE COURT: That's not the way it works.

9 DR. DeBELLIS: Okay.

10 THE COURT: All right. So, Mr. Bobrow, let's
11 say that I am inclined to dismiss because I don't think that
12 there are sufficient allegations here that are not
13 conclusory that show that these products -- that allege that
14 these products infringe. Why should I dismiss with
15 prejudice as opposed to giving him one more opportunity?

16 MR. BOBROW: Your Honor, respectfully, this case
17 began nearly two years ago. It began with a filing of a
18 complaint in the District Court in Texas which was
19 subsequently transferred here. We moved to dismiss. The
20 Court provided guidance on what needed to be done and
21 virtually nothing was changed from one complaint to the
22 next.

23 At the time the complaint was first filed, Vilox
24 was represented by counsel. They filed the complaint in
25 Texas. Mr. DeBellis is now proceeding pro se, but in the

15:24:00 1 course of the case that's a more or less new development. I
15:24:03 2 mean, the beginning of the case, counsel was hired, counsel
15:24:06 3 had a Rule 11 obligation, counsel went ahead and filed these
15:24:10 4 claims.

15:24:10 5 We submit that having failed in the Amended
15:24:14 6 Complaint after all of this time to provide any suggestion
15:24:18 7 that Oracle does this, that he's had more than enough time
15:24:24 8 and it should be dismissed with prejudice.

15:24:29 9 THE COURT: All right. So I am going to grant
15:24:36 10 the motion. Let me ask you this. You have that other case
15:24:41 11 out there. Why are we not consolidating these cases? Why
15:24:44 12 do I have two different cases that I have to figure out?

15:24:48 13 MR. BOBROW: I don't know why they have not been
15:24:49 14 consolidated, Your Honor. I don't think a motion to
15:24:51 15 consolidate has been made, but they do stand I guess as two
15:24:55 16 cases, our DJ case with our breach claim and then this case.

15:24:59 17 THE COURT: Any objection to those cases being
15:25:01 18 consolidated?

15:25:04 19 MR. RAMEY: None from Vilox Technologies, Your
15:25:07 20 Honor. If I could add a little color. I think there is an
15:25:12 21 explanation that was probably set a little over a year ago.
15:25:16 22 We do, in fact, have local counsel, Mr. Forsten from Saul
15:25:20 23 Ewing, but he assumed this case would disappear and we would
15:25:23 24 all be on that case, that's why we didn't have him enter an
15:25:27 25 appearance here. I asked to, but that was the kind of the

15:25:32 1 assumption we all were playing with I think thirteen months
15:25:35 2 ago.

15:25:37 3 THE COURT: Okay. Do you have any objection to
15:25:41 4 these things being consolidated?

15:25:43 5 MR. BOBROW: No, Your Honor.

15:25:44 6 THE COURT: Mr. DeBellis, do you have any
15:25:47 7 objection to the cases being consolidated?

15:25:49 8 DR. DeBELLIS: No, Your Honor.

15:25:50 9 THE COURT: So we'll consolidate those just so
15:25:52 10 it's easier as we go forward. As I said, I'm going to grant
15:25:57 11 the motion to dismiss. I will give -- given that the
15:26:01 12 plaintiff is proceeding pro se, I will give him one more
15:26:05 13 opportunity. I will not, however, grant just leave to
15:26:11 14 amend. I will let plaintiff try to amend using our
15:26:20 15 procedures for a motion to amend. So if you have a new
15:26:25 16 complaint where you think -- you're going to get a
15:26:30 17 transcript, if you want one, and you're going to see all of
15:26:33 18 the complaints that Mr. Bobrow laid out as to what is not
15:26:37 19 correctly pleaded. If you can correctly plead, then you
15:26:42 20 should go ahead and try it. If you can't, then stick to
15:26:46 21 what you think you can plead.

15:26:51 22 So what I am going to do is you can come up with
15:26:56 23 a new complaint, you can show it to the other side, see if
15:27:00 24 they'll agree that it's appropriate to file. If not, then
15:27:03 25 you need to follow our procedures which is you call, you get

15:27:07 1 a date for a hearing on a motion to amend and we will come
15:27:09 2 here and decide whether you can amend or whether it's
15:27:14 3 futile, in which case you would not be allowed to amend.

15:27:17 4 So I think that's the way we're going to
15:27:23 5 proceed.

15:27:25 6 MR. BOBROW: Your Honor, I was wondering if
15:27:27 7 there was any sort of time frame or deadline by which this
15:27:31 8 should happen?

15:27:32 9 THE COURT: How much time do you need,
15:27:34 10 Mr. DeBellis?

15:27:35 11 DR. DeBELLIS: I don't -- what's the usual?

15:27:39 12 THE COURT: I don't know how to answer that.

15:27:40 13 MR. RAMEY: Your Honor, if I may. May I?

15:28:10 14 Sorry, Your Honor. We've agreed -- if the Court
15:28:14 15 would give us thirty days, we've agreed with the other side.

15:28:18 16 THE COURT: Okay. Thirty days. Okay.
15:28:26 17 Thirty days to try to allege what's necessary. Please take
15:28:33 18 into account the complaints that you've seen in the papers.
15:28:37 19 Where you're referring to documents from all over different
15:28:40 20 places, you need to be able to show that a particular
15:28:44 21 product does what you were saying that it does. If it's a
15:28:48 22 method claim, you need to tell me who is using it, not just
15:28:52 23 that some database does something. I don't know if that
15:28:55 24 means Oracle does it. I don't know if that means a customer
15:28:58 25 does it. It's unclear from your allegations. So you need

15:29:01 1 to sit down and try and figure those out.

15:29:05 2 And then after we get that, if it's not agreed
15:29:10 3 that the allegations are sufficient, I'll allow limited
15:29:16 4 letter briefing. You can tell me why you think it's futile,
15:29:21 5 you can tell me why you don't think it's futile, and then
15:29:24 6 we'll have a hearing and I will decide. But this is your
15:29:27 7 last opportunity.

15:29:28 8 DR. DeBELLIS: Thank you, Your Honor.

15:29:29 9 THE COURT: And if you want to proceed pro se,
15:29:32 10 you're going to have to step up your game and not come in
15:29:35 11 here completely unprepared because all that is going to
15:29:39 12 result in is your case getting dismissed.

15:29:41 13 DR. DeBELLIS: Yes, Your Honor.

15:29:41 14 THE COURT: Anything else we need to address
15:29:43 15 today?

15:29:43 16 MR. BOBROW: Nothing from Oracle, Your Honor.

15:29:48 17 MR. RAMEY: Just, I don't think there is any way
15:29:50 18 to limit my firm's involvement to just Vilox and defense of
15:29:54 19 the contract, but I was going to see, obviously the Court
15:29:58 20 had let us in the patent infringement action only for the
15:30:01 21 assignment and discovery which never occurred in the past
15:30:04 22 thirteen months, so I don't think there is any order that
15:30:09 23 would indicate the breach of contract. I can't think of
15:30:12 24 anything from Vilox today.

15:30:14 25 THE COURT: Tell me where we are on this whole

15:30:18 1 Dr. DeBellis is now pro se but you're not letting the other
15:30:22 2 entity out for the patent, but you haven't done anything on
15:30:25 3 that issue, so I don't know what we're doing with that.

15:30:30 4 Everyone doesn't have to be standing. I'm not
15:30:33 5 sure if I made you stand or not, but you're welcome to sit.

15:30:36 6 MR. BOBROW: Thank you.

15:30:36 7 MR. RAMEY: I have been sitting too long, Your
15:30:40 8 Honor.

15:30:40 9 MR. BOBROW: Your Honor, since we filed -- since
15:30:43 10 the Court gave leave to permit us to conduct the discovery,
15:30:47 11 a new complaint was filed, the Amended Complaint, and we
15:30:50 12 promptly moved to dismiss it. We've now had a hearing where
15:30:53 13 the Court has ruled on dismissal. Because of the status of
15:30:57 14 that pleading, we had not conducted yet the discovery
15:31:00 15 because if the complaint had been dismissed with prejudice,
15:31:03 16 essentially that sort of moots the whole thing. So if the
15:31:06 17 Court is --

15:31:08 18 THE COURT: I need this all to go at the same
15:31:10 19 time. I need to you multitask here. Maybe it would be that
15:31:15 20 we don't let them re-file, amend the complaint yet again,
15:31:18 21 but Mr. Ramey is just kind of hanging out here because
15:31:23 22 nobody is doing anything. You're like well, maybe the
15:31:27 23 company is still here, and so I haven't let him out. But it
15:31:35 24 seems unfair that he's tried to get out for over a year now
15:31:38 25 and you're just like, well, we're not going to bother to

15:31:42 1 figure out if we want to let the company out or not, so I
15:31:45 2 need you to move on that.

15:31:47 3 MR. BOBROW: Will do. We'll go ahead and serve
15:31:51 4 discovery. Let me note that Dr. DeBellis -- Vilox is in the
15:31:56 5 case in part because of our breach claim as well.

15:31:59 6 THE COURT: No, no, no, I realize that, and it
15:32:01 7 seems like they have counsel who is appearing for that on
15:32:06 8 the breach claim as the -- but I don't know that he's -- he
15:32:12 9 hasn't appeared in this case. So I can't say that he's
15:32:16 10 representing anybody in connection with the patent issues.
15:32:19 11 He's not here. These cases were only recently -- today
15:32:25 12 we're going to consolidate them, but it doesn't seem that he
15:32:30 13 is making an appearance or representing for the patent
15:32:35 14 matter. What I need to know is do you object to Vilox being
15:32:41 15 dismissed out of the patent case? Certainly I understand
15:32:46 16 you have claims against Vilox and they need to be
15:32:49 17 represented by counsel for the breach claim. All I care
15:32:53 18 about right now is the patent claim.

15:32:54 19 MR. BOBROW: With respect to your prior comment,
15:32:58 20 Your Honor, we will now, given what Your Honor has just
15:33:02 21 said, we will serve discovery and if that discovery points
15:33:06 22 to no connection between Vilox and the patents, then of
15:33:09 23 course we would have no objection. If the discovery shows
15:33:12 24 otherwise, then yes, we would object.

15:33:14 25 THE COURT: That makes sense to me. Just it

15:33:16 1 would be helpful if you took the discovery so we can figure
15:33:19 2 out where we are.

15:33:20 3 MR. BOBROW: Will do.

15:33:21 4 THE COURT: All right. Anything else?

15:33:23 5 MR. RAMEY: Nothing from Vilox. Thank you, Your
15:33:25 6 Honor.

15:33:25 7 MR. BOBROW: Thank you, Your Honor.

15:33:25 8 THE COURT: All right. Thank you.

15:33:26 9 COURTROOM DEPUTY: All rise. Court is
15:33:29 10 adjourned.

11 (Court adjourned at 3:33 p.m.)

12

13 I hereby certify the foregoing is a true and
14 accurate transcript from my stenographic notes in the proceeding.

15

16 /s/ Dale C. Hawkins
17 Official Court Reporter
18 U.S. District Court
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